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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,052	12/04/2001	Adelmo Monsalve-Gonzalez	5553	9205
30173	7590	06/10/2004		
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,052

Applicant(s)

MONSALVE-GONZALEZ ET AL.

Examiner

Lien T Tran

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eo

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16-18 and 20-48 is/are rejected.
- 7) ☒ Claim(s) 10-15 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1 and 15 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed March 30, 2004, applicant amended claim 1 to include the limitation of "ferulic acid finished concentration of less than 50 ppm"; this range is not disclosed in the specification. The original claim recites "the ferulic concentration is less than 50% of the native concentration". Page 8 of the specification discloses "an initial or native concentration of ferulic acid ranges from about 20-40ppm"; thus, less 50% of this range is 10-20ppm or less. The range now claimed includes 49,48,35, 37 ppm etc... which is not disclosed in the specification. Page 12 discloses "the ferulic acid level can range from about 15ppm to about 30ppm"; there is no disclosure of less than 50ppm. The amendment in claim 15 is not supported by the original disclosure. The original claim and specification do not disclose "treating the filtered wet bran with catalase to remove residual acidulant".

Claims 1-6, 33-35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Stanley (4,844,924).

Stanley discloses a method of preparing a bran product. The method comprises the steps of reacting the bran with lower aliphatic carboxylic acid, acid halide, ester or anhydride and bleaching the reacted bran with one or more bleaching agents. The agents used are peroxides, chlorites, peracids and ozone. Following breaching, the

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bleached bran is isolated from the bleaching medium by filtration, centrifugation etc, washed and dried to form a free-flowing particulate. ( see columns 1,3-4 and example 5).

The reference discloses the limitations of the above cited claims. While column 3 lines 40-46 discloses the pH is maintained at 8-10 when the bran is reacted with the esterifying agent, the pH is adjusted to an acidic level after the esterifying step and before the bleaching step. Example 5 discloses adjusting the pH to 5 before bleaching. This meets the limitation of acidifying the bran to a pH of about 4-6 prior to treating with ozone cited in claim 2. The bleaching agent can be ozone as cited on column 3 line 65. The properties recited in claims 1, 3,4,5 and 36 are inherent in the Stanley product because it is treated the same as claimed. Stanley also discloses the product prepared from the method which meets the limitation of claims 33,34 and 35. The bran treated is corn bran which meets the limitation of claim 6.

Claims 7-9,16-18,20-32 and 37-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley.

The teaching of Stanley is described above. Stanley does not disclose the bran is wheat bran or red wheat bran, the size of the bran is about 100 microns, the steps recited in claims 10-15, the acid as in claims 16-17, the moisture content of the bran, admixing the bran with flour, forming a dry mix, forming cereal pieces, adding the bran to a grain product and forming the grain product into finished baked good.

While Stanley discloses the preferred bran is corn bran, other material including vegetable, cereal and fruit sources can be used as the starting material. Therefore, it

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would have been obvious to one skilled in the art to use other type of bran when desiring to bleach such bran product. Stanley discloses bran of varying particle sizes; it would have been an obvious matter of choice to pick any. The bran product disclosed by Stanley is a dietary fiber material having improved color stability. It would have been obvious to one skilled in the art to add the bran product to any food product including dry mix, cereal, grain product, baked goods etc...when one desires to increase the fiber content of that product. Stanley discloses adding the bran to dough for bread, crackers, cookies and biscuits. If the bran can be added to the dough, it can be added to the flour which is used to make the dough. The use of whole wheat flour or regular wheat flour would have been an obvious matter of choice. It would also have been obvious to add the bran to grain product and cereal product because these food products are typical made to have a high fiber content. The addition of the bran will serve such purpose. The making of cereal pieces is well known in the art; thus, the steps of making the cereal pieces would have been readily apparent to one skilled in the art. It would also have been obvious to use grain product to prepare baked good because they are commonly prepared from grain product. The properties in claims 41 and 43 are obviously found in the Stanley product because it is prepared using the same method as claimed. When the bran is added to whole wheat flour, it is obvious the pH will be the same as claimed because the same flour is used.

Claims 10-15 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose

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the steps as recited in these claims and there is not suggestion to incorporate these steps into the prior art process. Specifically, there is no suggestion to treat the bran with the chelating agent for the time and at the temperature claimed and to blanch the bran for the time and at the temperature claimed. Additionally, there is no teaching of using ozone in the amount claimed.

In the response filed March 30, 2004, applicant argues Stanley has absolutely no disclosure concerning the claimed method of reducing ferulic acid in bran through ozone treatment. This argument is not persuasive. The method recites the step of reacting bran with ozone; since the bleaching agent in Stanley can be ozone, Stanley teaches the step of reacting bran with ozone. The examiner maintains her position that the property of reducing the ferulic acid is inherent in the Stanley process because the bran is reacting with the same material as claimed. The claimed process corresponds to that of the reference, the recognition of an inherent result realized thereby and which result must necessarily also be obtained in the prior art reference. Then the result cannot be basis for patentable distinction ( see In re Best 195 USPQ430). Whether Stanley is concerned with using ozone to reduce the level of ferulic acid or not is not an issue because Stanley teaches to use the same agent on the same starting material as claimed. Applicant states claims 3-4 are not addressed in the office action; the examiner takes the position that such property is inherent in the Stanley process for the same reason set forth above. The argument directed at claims 10-13, 14 and 19 will not be addressed because these claims are no longer included in the rejection.

Applicant's arguments filed March 30, 2004 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 9, 2004

  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1700*